

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1183

76-1183

In The
UNITED STATES COURT OF APPEALS
For The Second Circuit

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PJS

THE UNITED STATES OF AMERICA,

Appellee,

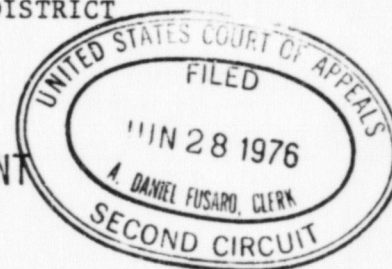
VS

RONALD WILLIAM HARVEY,

Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION OF THE UNITED
STATES DISTRICT COURT FOR THE WESTERN DISTRICT
OF NEW YORK, CR. 1975-159

APPENDIX FOR THE APPELLANT



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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-1183

THE UNITED STATES OF AMERICA,

Appellee,

VS

RONALD WILLIAM HARVEY,

Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION OF THE UNITED
STATES DISTRICT COURT FOR THE WESTERN DISTRICT
OF NEW YORK, CR. 1975-159.

APPENDIX FOR THE APPELLANT

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

John T. Curtis

A-1

D. C. Form No. 100 Rev.

CR - 75 - 159

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	
RONALD WILLIAM HARVEY	Richard Mellenger, Esq. Assistant U.S. Atty. Rm. 502 U.S. Courthouse Buffalo, N.Y. 14202
By force and violence and by intimidation, did take from the person and presence of an employee, money belonging to an FDIC-Insured bank, in violation of Title 18, U.S.C., Section 2113(a)(Ct. 1); Did take and carry away, with intent to steal and purloin, money belonging to an FDIC-Insured bank, (Ct. 2), in violation of Title 18, U.S.C., Section 2113(b)	For Defendant: Richard Brownstein, Esq. (assigned) 808XN4135XN4135XN4135 Buffalo, N.Y. 14203 Tel. No. 856-5677(716) 427 Brisbane Bldg.
Offenses: 4/22/75	3 Cts.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed AUG 5 1975	Clerk				
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title 18					
Sec. 2113(a)(b)					

DATE	PROCEEDINGS
July 10 1975	Filed Indictment
July 10	J.S. 2 made
July 15	Proceedings before the Magistrate - Defendant appeared without an Attorney; Adj. 7/17/75 when it is understood Mr. Brownstein will be back in town.
July 13	Proceedings before the Magistrate — Deft. entered not guilty plea to all counts. Attys. to report to Magistrate informally as to discovery. Argument of motions is scheduled 7-25-75. Deft. motion for reduction in bail denied. Deft. continued on \$10,000 bail - remained to custody of Marshal.
July 21	Filed govt's motion, action ready for trial.
July 23	Filed Magistrate's docket with temporary commitment, warrant of arrest, add affidavit and complaint
July 26	File Govt's response to pre-trial discovery motions.
July 29	Proceedings before the Magistrate - Mr. Brownstein requested adj. of argument. Rescheduled 7/30/75
Aug. 4	Filed Deft's notice of motion for discovery & inspection, etc. ret. 7/25/75
Aug. 13	Meeting with Court and Counsel. Identification hearing scheduled for 8-22-75 at 2:00 p.m.

DATE 1975	PROCEEDINGS
Sept. 23	Filed Order that the motion of the defendant to suppress the identification testimony is denied--CURTIN, J.; Counsel are directed to meet with the Court at 9:00 a.m. on Friday, September 26, 1975 for a pre-trial meeting.
Sept. 23	Filed stipulation that for purposes of determining the defendant's motion to suppress identification evidence, a hearing will not be necessary in this case and the Court can decide defendant's motion on the basis of the stipulation etc.
Sept. 24	Filed subpoena - Florida Strickland- served 9/22/75
Sept. 22	Hearing. In lieu of hearing, attorneys have entered into stipulation concerning the facts. Submitted.
Sept. 30	A pre trial conference was held in the above case. Adj. to 10-9-75 for further pre trial.
Oct. 9	Pre-trial conference held in the above case. Adj. to 10/20/75 for further pre-trial.
Oct. 20	Plea. Adj. to October 23, 1975
Oct. 24	Pre trial conference held in the above case. Case ready for trial immediately after the Nugent and Huston cases. Deft. moves for court appointed counsel. Motion granted. Court directs Clerk to file order appointing Richard Brownstein counsel for defendant.
Oct. 29	Filed CJA 20 Order--appointing Richard Brownstein as counsel for deft. Copy 5 filed with clerk and copy 4 mailed to adm. office, remaining copies to Atty. for completion.
Oct. 24	Pre trial conference held in the above case. Case ready for trial immediately after the Nugent and Huston cases. Deft. moves for Court appointed counsel. Motion granted. Court directs clerk to file Order appointing Richard Brownstein, counsel for deft.
Nov. 4	Filed transcript of the Preliminary Hearing before Magistrate Maxwell, on May 22, 1975
Nov. 6	Pre trial conference held. Trial on Nov. 18, 1975.
Nov. 18	Government moves case ready for trial, whereupon the Court adj. trial until 11/26/75.
Nov. 26	Pre trial conference held. Trial 12/4/75
Dec. 9	Government moves case ready for trial, whereupon the jury is duly empanelled - Trial is adj. to a time to be fixed by the Court.
Dec. 10	Filed subpoena - Priscilla Martin, served 12/5/75
Dec. 12	Filed three subpoenas - Irene Witczak, served 12/11/75; Robert Kistner, Florida Strickland, served 12/11/75
Dec. 15	Filed Govt's trial Memorandum
Dec. 14	Filed subpoena for Mary Jeter served 12/11/75
Dec. 16	Filed two subpoenas for Mary Jeter returned no service.
Dec. 17	Filed subpoena to testify - Ronald Scalzetta, served 12/15/75
Dec. 15	Trial continues from December 9 with the same appearances -- and jury. Trial is hereby adj. until tomorrow
Dec. 16	Trial continues from yesterday with the same appearances & jury. The jury is sent home for the night to return tomorrow morning at 9:30 to deliberate upon their verdict.
Dec. 17	Jury returns and returns to start their deliberations. The jury then

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[illegible]

In the District Court of the United States

For the Western District of New York

A-4

THE UNITED STATES OF AMERICA

-vs-

RONALD WILLIAM HARVEY

NOVEMBER 1974 SESSION, ~~XXXX~~
(Impaneled 1/21/75)

No.
C R - 75 - 159

Vio. Title 18, U.S.C.,
§2113(a)(b)

COUNT I

The Grand Jury charges:

On or about the 22nd day of April, 1975, in the Western District of New York, RONALD WILLIAM HARVEY, by force and violence and by intimidation, did take from the person and presence of Florida Strickland about \$1,100.00 in money, belonging to and in the care, custody, control, management and possession of the Main-High Branch of the Marine Midland Bank-Western, the deposits of which were then insured by the Federal Deposit Insurance Corporation; all in violation of Title 18, United States Code, §2113(a).

COUNT II

The Grand Jury further charges:

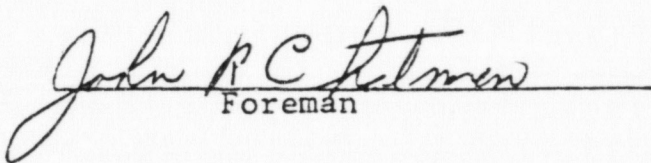
On or about the 22nd day of April, 1975, in the Western District of New York, RONALD WILLIAM HARVEY, did take and carry away, with intent to steal and purloin, from the Main-High Branch of the Marine Midland Bank-Western, the deposits of which were then insured by the Federal Deposit Insurance Corporation, the sum of about \$1,100.00 belonging to and in the care, custody, control, management and possession

-2-

of the said bank; all in violation of Title 18, United States Code, §2113(b).


RICHARD J. ARCARA
United States Attorney

A TRUE BILL:


Foreman

CR - 75 - 159

No. _____

UNITED STATES DISTRICT COURT

WESTERN District of NEW YORK

~~Division~~

THE UNITED STATES OF AMERICA

vs.

RONALD WILLIAM HARVEY

INDICTMENT

A true bill,

John P. Chatman
Foreman.

Filed in open court this _____ day
of _____, A. D. 19____

Clerk.

Bail, \$_____

JUL 10 4 05 PM '75
U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1 what time?

2 JUROR NO. 4: At between twenty of and quarter to
3 5:00.

4 THE COURT: Where do you go for the bus?

5 JUROR NO. 4: Hotel Statler.

6 THE COURT: At the Statler?

7 JUROR NO. 4: Yes.

8 THE COURT: Very well. Then what I would do, -
9 would it be agreeable if I charge you now
10 and then I would have you come back
11 tomorrow morning and deliberate. Very
12 well.

13 Ladies and gentlemen, you have
14 heard all of the evidence in this case
15 and it is your function to determine the
16 facts from the testimony of all the
17 witnesses, the direct testimony and the
18 cross examination. You are also entitled
19 to consider the exhibits which have been
20 entered into evidence in this case and
21 to consider that, of course, along with
22 the witnesses' testimony.

23 It is my function in the lawsuit to
24 try to charge you on the law to the best
25 of my ability and you arrive at a verdict

1 by careful deliberation, thinking of the
2 facts, thinking of the law, and discussing
3 it in a reasonable manner with your
4 fellow jurors.

5 You are not to discuss the case this
6 evening with anybody at all. You are not
7 even to talk to, if you happen to ride
8 home with a fellow juror, do not talk to
9 that juror about the facts or the law of
10 the case. Wait until you are all
11 assembled tomorrow morning and may I
12 suggest that you converge at 9:30, if that
13 is agreeable to you, in the jury room
14 tomorrow morning to begin your delibera-
15 tion. The exhibits will be there. Mr.
16 White will deliver the exhibits to you
17 there tomorrow so you will have them
18 during deliberation.

19 Deliberation means, of course,
20 giving your fellow jurors your reasonable
21 explanation of what you think the facts
22 and the law points to. It also means that
23 you should listen to your fellow jurors'
24 careful deliberation, careful reasoning
25 and weighing of the evidence in the case.

1 You are not to decide the issues in the
2 case based upon bias, sympathy for the
3 defendant or any other improper motive.
4 You are to decide the case only on the
5 facts and the law.

6 You certainly should give careful
7 heed to the arguments made by the lawyers
8 in this case, but if you find that what
9 they had to say about the facts and the
10 law do not square with what your recollec-
11 tion is that the witnesses testified to
12 or to what I charge you the law is, that
13 you should then take the facts from the
14 witnesses and the law from the Court
15 rather than from the lawyers.

16 As I have explained to you in the
17 very beginning of this case, the defendant
18 is presumed innocent. That presumption
19 remains with him throughout the trial and
20 is not overcome until you have finally
21 arrived at a verdict by unanimous vote.

22 There are two counts in this charge,
23 this indictment, and you will take up
24 each count separately and vote on each
25 separately and your vote must be unanimous,

1 all jurors agreeing on a result.

2 The indictment is only a manner of
3 bringing a person to trial to let him know
4 what he is charged with. It is certainly
5 not any evidence at all of any criminal
6 conduct. The presumption of innocence is
7 a most important right and is to be
8 accorded to this defendant just as
9 carefully as you would want to have it
10 accorded to yourself or anyone close to
11 you.

12 In order to determine the facts in
13 the case, the first thing you will do,
14 certainly, is determine the credibility
15 of the witnesses. The witnesses who have
16 testified here, you should consider their
17 cross examination just as carefully as you
18 did the direct examination. If you find
19 that in this case, as Mr. Brownstein has
20 pointed out in his summation, there are
21 discrepancies between the testimony of
22 the various witnesses here, Mrs. Strickland
23 and Mrs. Martin, the description of the
24 individual they saw. It is up to you to
25 weigh those discrepancies to tell whether

1 or not the witnesses were being untruth-
2 ful or whether they were accurate. It is
3 up to you to use your common sense to
4 determine how much weight you will give
5 to any particular witness who testified
6 here. It is your judgment which controls
7 as far as the testimony of the witnesses
8 is concerned.

9 You may in assessing the weight to
10 be given to a particular witness, you may
11 take into account the witness' intelligence,
12 motive, state of mind, demeanor and
13 manner while on the stand. You may judge
14 any relationship which the witness may
15 bear to either side of the case, the
16 manner in which the witness might be
17 affected by the verdict; the extent to
18 which, if at all, the witness is either
19 supported or contradicted by other evidence
20 in the case. The mere fact that the
21 testimony of a witness is inconsistent or
22 that there are discrepancies in the
23 testimony does not mean that you must
24 reject the witness' credibility. You
25 must determine whether the inconsistency

1 or discrepancy is a result of falsifica-
2 tion or whether, on the other hand, it
3 is the result of inaccurate observation
4 or innocent miscalculation.

5 If you find that any witness has
6 lied with respect to any material portion
7 of his or her testimony, you may disregard
8 that portion which you find to be un-
9 believable or you may, if you desire,
10 disregard the entire testimony of the
11 witness. In evaluating credibility, you
12 will determine whether or not the testimony
13 of a witness is inherently improbable or
14 contradictory in view of other evidence
15 in the case. In other words, ladies and
16 gentlemen, you should use your everyday
17 common sense in approaching the problems
18 of the witnesses and determining whether
19 or not they were worthy of belief and
20 how much they are worthy of belief.

21 In this case there are two counts;
22 in the first count the defendant here,
23 Ronald Harvey, is charged with a violation
24 of Title 18, United States Code, Section
25 2113(a). This count, briefly states that

1 on or about the 22nd day of April, 1975,
2 that Ronald Harvey, by force, violence
3 and by intimidation, did take from the
4 person and presence of Florida Strickland
5 about \$1,100 in money belonging to and
6 in the care, custody, control, management
7 and possession of the Main-High Branch
8 of the Marine Midland Bank Western, deposits
9 of which were then insured by the
10 Federal Deposit Insurance Corporation.

11 The Government is required to prove
12 beyond a reasonable doubt the following
13 elements in order to satisfy a charge
14 under this particular count:

15 It first must prove the act or acts
16 of taking from the person or presence of
17 the individual named in the indictment
18 money belonging to or in the care, custody,
19 control, management or possession of the
20 bank.

21 Secondly, that the act or acts of
22 taking such money by force and violence
23 or by means of intimidation.

24 Thirdly, that the acts were done
25 willfully. "Willfully" means to do

1 deliberately, purposely, with a specific
2 intent to rob the bank, not by mistake,
3 not by some unconscious act, but deliber-
4 ately.

5 The Government must also prove
6 beyond a reasonable doubt that the funds
7 of the bank were insured by the Federal
8 Deposit Insurance Corporation.

9 The second count charges that at
10 the same day, the same time, that the
11 defendant did take and carry away with
12 intent to steal and purloin from the same
13 bank the same sum, the sum of \$1,100,
14 the deposits of which, again, were insured
15 by the Federal Deposit Insurance Corpora-
16 tion. As far as this count is concerned,
17 this charge is a violation of Section
18 2113(b) and in order to prove a violation
19 of this count, the Government is required
20 to prove beyond a reasonable doubt the
21 following elements:

22 Firstly, the taking and carrying away
23 of the funds charged.

24 Secondly, with intent to steal or
25 purloin and the fact that the moneys taken

1 were in the possession or control of
2 the bank and, again, that the bank was
3 insured with the Federal Deposit Insurance
4 Corporation.

5 The Government must also prove
6 beyond a reasonable doubt as to count two
7 that the acts were done willfully and
8 not by mistake, with a specific intent
9 to steal the funds of this particular
10 bank.

11 The fact that the United States is
12 a party here should not enter into your
13 deliberations. You should, of course,
14 listen to the arguments of Mr. Brownstein
15 just as carefully as you did to those of
16 Mr. Mellenger.

17 During the course of the trial, I
18 have ruled on a number of objections
19 interposed by either side, and if I have
20 permitted the testimony to be listened
21 to, you should consider it. If I did
22 not, you should not consider it. You
23 should make up your mind in this case
24 based upon the evidence you have heard
25 here in the case, not by material which, -

1 some general notions of what ought to
2 be done. In other words, you must
3 decide this particular case.

4 It is certainly the rule in our
5 courts and it is an important rule, -
6 Mr. Brownstein adverted to it, and
7 properly so during his summation that the
8 Government has the burden of proving
9 guilt beyond a reasonable doubt and that
10 burden remains upon the Government at
11 all times. It never shifts to the
12 defendant. The defendant in our courts
13 is not obligated in any way to make any
14 explanation and to offer any evidence
15 whatsoever. That is up to the Government.
16 In this case Mr. Harvey chose not to take
17 the stand. That is his absolute right.
18 His failure to take the stand may not
19 be considered by you, may not be talked
20 about, may not be discussed by you in
21 any fashion. He has the right not to
22 take the stand and that failure to take
23 the stand may not be considered against
24 him in any way at all.

25 In considering the burden upon the

1 Government in proving his guilt beyond
2 a reasonable doubt, there are certain
3 considerations which you must keep in
4 mind. It does not mean, "Proof beyond a
5 reasonable doubt" does not mean that
6 you must take proof of guilt, - excuse
7 me. Strike that, please. A reasonable
8 doubt is a doubt that is based upon
9 reason and appeals to your power of
10 logic. It is a doubt arising out of
11 something tangible in the evidence in
12 the case. It is distinguished from a
13 doubt that might be based upon some
14 emotion such as a whim or fancy. If
15 you feel uncertain and not fully convinced
16 that the defendant is guilty of the crime
17 charged and you believe you are acting in
18 a reasonable manner, and if you believe
19 a reasonable person in any matter of like
20 importance would hesitate to convict
21 because of such a doubt as you have, that
22 is a reasonable doubt to the benefit of
23 which the defendant is entitled. A
24 reasonable doubt, as I have explained
25 before, extends to every essential element

1 of the crime charged. If you find that
2 the Government has failed in any element
3 as to either count, as to that count,
4 then your vote would be not guilty.

5 The Government may not rely upon
6 speculation or intuition or guesswork.
7 You must find the evidence in the case
8 from the testimony of the witnesses and
9 from the exhibits before you can vote a
10 verdict of guilty.

11 The Government does not have the
12 burden, however, to prove the guilt to a
13 moral certainty. It is rarely possible
14 to prove any proposition beyond every
15 doubt possible. The rule is that the
16 Government must prove beyond a reasonable
17 doubt under the definition I have given
18 to you.

19 Going back to count one where one of
20 the elements is to prove that the act or
21 acts of taking such money by force or
22 violence or by means of intimidation, this
23 means that you must be convinced beyond
24 a reasonable doubt that reasonably the
25 teller who was involved was put in fear

1 and acted through that reason. That is
2 an element which the Government is
3 obliged to prove just as any other.

4 During your deliberations, it is a
5 good idea to have one of your number
6 act as foreman. This individual can
7 report to the Court when you have reached
8 a unanimous verdict. In this case it
9 appears to me that your verdict can be
10 announced orally when you come back into
11 court upon questioning by Mr. White, the
12 clerk. If you have any question, you
13 should only communicate with the Court
14 by a written communication which you can
15 deliver to the marshal. If you come into
16 court for some discussion of some problem,
17 do not tell me how you stand numerically
18 until you have reached a unanimous verdict.

19 During this trial, as you recall, I
20 have instructed you from time to time.
21 I gave you instruction, some instruction
22 when we were selecting the jury, for
23 example. All of these other instructions
24 should be considered by you just as
25 carefully as those that I have given to

1 you at the end of the trial.

2 At this time, ladies and gentlemen,
3 I will ask you to step into the corridor
4 for a few minutes with the marshal and
5 I will listen at that time to any
6 exceptions from the lawyers to the charge
7 or requests for any further charge and
8 then we will have you back.

9
10 (Jury escorted from the courtroom.)

11
12 THE COURT:

 Mr. Mellenger, do you have any
13 requests or exceptions?

14 MR. MELLENGER:

 I have no objections to the charge,
15 your Honor. However, I do have a request
16 for two additional charges, and one would
17 be the charge that all available evidence
18 need not be produced that was made a
19 point in Mr. Brownstein's closing
20 argument, and the second one is on the
21 circumstantial evidence, direct and
22 indirect evidence. Mr. Brownstein also
23 made a remark about that in his closing
24 and I believe the Court should give an
25 instruction on that.

1 THE COURT:

In this case it seems that one way
2 or another the evidence is direct.
3 Either the jury is going to believe Mrs.
4 Strickland, Mrs. Martin or the photographs.
5 This is all direct evidence and therefore
6 I do not think it would help at all to
7 give any further charge on that.

8 MR. MELLENGER:

Well, Mr. Brownstein had indicated
9 in his closing that the Government was
10 presenting just circumstantial evidence
11 and I am requesting an additional
12 definition of that.

13 THE COURT:

I do not think either point need be
14 discussed further. Mr. Brownstein.

15 MR. BROWNSTEIN:

Yes. I am trying to get the verbiage
16 of this one charge. Maybe you are
17 familiar with it. It goes something like
18 this, "If you find that in a given
19 situation by reasonable hypothesis or
20 conclusion is as consonant with innocence
21 as it is with guilt, you must find for
22 the defendant." Is your Honor familiar
23 with that one?

24 THE COURT:

Yes. I do not think that is appropri-
25 ate to this case. I decline to charge.

1 MR. BROWNSTEIN: Thank you. No further requests.

2 MR. MELLENGER: Have you declined the charge about
3 all available evidence, your Honor?

4 THE COURT: Both, any further charges. Have
5 the jury come back, please.
6

7 (Jury returns to the courtroom.)
8

9 THE COURT: Ladies and gentlemen, we are going
10 to be in recess now until tomorrow
11 morning at 9:30. Go to the jury room
12 first and then we will have you come
13 up and we will have the marshals formally
14 sworn at that time, so that means that
15 the alternate juror, as well as all the
16 jurors, must be here tomorrow morning
17 and then at that time the case will be
18 formally given to you for your delibera-
19 tion. Again, it is most important that
20 you do not discuss this matter informally
21 with your fellow jurors or especially
22 with anyone else at this time. I hope
23 you all have a good evening and we will
24 see you in the morning at 9:30, please.
25 You may go out with the marshal.

1 THE COURT: All right, fine.

2
3 (Recess taken at 2:42 p.m.)

4
5
6 * * * * *

7
8
9 PROCEEDINGS: After recess, 2:50 p.m.

10 APPEARANCES: As before noted.

11 (Defendant present.)

12 (Jury not present.)

13
14 THE COURT: Mr. Brownstein, I do not believe
15 that you should be permitted at this
16 time to put the mother on. This is a
17 collateral matter. Some of it has to do
18 with a statement made directly by the
19 former witness, but it is still collateral.
20 Furthermore, the attention of the witness
21 was not called to any conversation with
22 the mother. I believe that Rule 613
23 which talks about the prior statements of
24 witnesses forecloses. 613(b) provides
25 that extrinsic evidence of a prior

1 inconsistent statement by a witness is
2 not admissible unless the witness is
3 offered an opportunity to explain or
4 deny the same and the opposite party is
5 offered an opportunity to interrogate
6 thereon. This was not as to the happen-
7 ing of the robbery. It has to do with
8 some kind of claim here that there was
9 bias on the part of the witness against
10 the defendant. I believe that more than
11 enough time has elapsed in this matter
12 to explore this matter thoroughly with the
13 witnesses and associates of the defendant.
14 Mrs. Martin here has given some very
15 definite denials of any kind of charge
16 placed like this. Certainly if there had
17 been any hospitalization because of a
18 beating and all this kind of thing, again
19 that really is collateral, and the other
20 thing is something of that serious a
21 nature should have been here, should have
22 been able to be used today rather than
23 wait for some later time. Mr. Mellenger,
24 as I understand, you have no information
25 came to you to indicate that the witness

1 was not open, candid, truthful on this.

2 MR. MELLENGER:

Absolutely none, your Honor. As a
3 matter of fact, to the contrary, your
4 Honor. I had questioned Mrs. Martin
5 about any accusations as to the defendant
6 having fathered a child in my office and
7 she had denied it at that time also.

8 THE COURT:

I am going to say we should continue
9 now and I do not think that the record is
10 sufficient to permit this kind of
11 testimony by the mother of the defendant.

12 MR. BROWNSTEIN:

May I be heard on that point, your
13 Honor?

14 THE COURT:

You have already been heard, and if
15 you want to say anything else, I will
16 listen to it.

17 MR. BROWNSTEIN:

Thank you. The witness placed her
18 credibility in issue, as all witnesses
19 do, when she took the stand. The Court
20 is asking the attorney to anticipate what
21 a witness is going to say and then insist
22 that he should have been prepared to meet
23 each and every contingency which may have
24 come from the box, which I in all due
25 respect do not think that the law either

1 explicitly or impliedly has ever stated
2 that. I told the Court that there were
3 matters brought out on the witness stand
4 which raised new points that I was not
5 aware of or could not have been aware of
6 and I further stated to the Court that
7 a witness that I had never interviewed
8 because I had no knowledge, no reason to
9 know that that witness had any information
10 as to what was said on the stand and I
11 came into that --

12 THE COURT: Mr. Brownstein --

13 MR. BROWNSTEIN: Yes.

14 THE COURT: I understand you had no information
15 about any of the matters that you now
16 want to inquire about before you came
17 into court today.

18 MR. BROWNSTEIN: I don't follow you. I am sorry.

19 THE COURT: You told me beforehand that your
20 client gave you a written note. On the
21 other hand, you told Mr. Mellenger two
22 weeks ago there was something about this
23 charge of parentage.

24 MR. BROWNSTEIN: Well, I am not talking about that.
25 I cannot speak on that on whether I told

1 Rick Mellenger two weeks ago. I am not
2 talking about that.

3 THE COURT: Make your statement and make it
4 briefly and quickly.

5 MR. BROWNSTEIN: I am attempting to do that, your
6 Honor. What I am saying to this Court is
7 that another witness who had new informa-
8 tion on the denials, the specific denials
9 made by the chief prosecution witness
10 approached me right after the break and
11 told me certain things.

12 THE COURT: Identify the witness.

13 MR. BROWNSTEIN: That is Catherine Harvey who has
14 knowledge I never knew or could have
15 known or should have known to ask her.
16 I did not know she was in possession of
17 that knowledge and it is critical and it
18 depends or relies on or affects materially
19 the credibility of the chief witness, and
20 this Court is not just cutting me off,
21 it is saying the denials of that witness
22 are enough and you should have anticipated
23 the denials and therefore we are foreclosing
24 you because it is a collateral matter and
25 in my opinion, your Honor, and in all due

1 respect, it is a crucial matter because
2 that witness is the Government case and
3 if her credibility can be honestly
4 attacked and proven to be false, then
5 that is an issue which should be raised,
6 and it is far from collateral. That is
7 my argument.

8 THE COURT:

 I deny your motion. Call the jury
9 up, please.